

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

29316

FILE: B-208687.2

DATE: September 17, 1984

MATTER OF: Railway Systems Engineering
Corporation

DIGEST:

1. Complaint that firm was improperly excluded from competitive range based on weaknesses in proposal in comparison to competition is without merit where firm has not shown that exclusion from competitive range was unreasonable.
2. Complaint regarding deficiency apparent on the face of a solicitation in procurement funded with federal funds must be filed prior to the closing date of receipt of proposals.
3. In grant-funded procurement, where complainant chooses not to raise certain issues with grantee and where grantor thereafter declines to consider these issues under its protest procedures, GAO also refuses to review these matters since such action would tend to undermine the effectiveness of grantor's grant administration function.

Railway Systems Engineering Corporation (RSEC) requests our review of the action of the Sacramento Transit Development Agency (STDA) in the award of two engineering consultant projects to support Sacramento's light rail transit development program. STDA is a recipient of federal grant funds from the Urban Mass Transportation Agency (UMTA), Department of Transportation, pursuant to UMTA grant project No. CA-29-9004. RSEC contends that STDA's "short listing" process, i.e., the process by which STDA selected firms in the competitive range with which to conduct discussions, was defective since it eliminated the more qualified firms from the competition. Our review is undertaken pursuant to 40 Fed. Reg. 42406 (September 12, 1975).

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We find that RSEC's complaint is without merit.

The request for proposals (RFP) was sent to those firms determined by the STDA staff to possess the necessary qualifications to accomplish the required work. Potential offerors were initially requested to submit to STDA a statement summarizing their qualifications and their area or areas of expertise. Based on this information, STDA determined whether the minimum requirements necessary to submit a proposal were met and, if so, the submission of a detailed proposal was requested.

The RFP indicated that separate consulting contracts would be awarded in each of the following areas:

- Systems Operation/Integration Consultant;
- DC Traction Power and Electrification System Design;
- Signaling System Design Consultant; and
- Vehicle Procurement Specifications, Procurement and Inspection Consultant.

Offerors were permitted to submit proposals in any or all areas in which the minimum requirements were met. A Selection Committee, appointed by STDA, evaluated the proposals and a competitive range was established of those firms most qualified to meet STDA's needs. Those firms were then requested to make an oral presentation and, after a second detailed evaluation, an award recommendation for each category was made.

RSEC was found to meet the minimum qualifications in the Systems Operation/Integration Consultant area and the Vehicle Procurement Specifications and Procurement area and invited to submit a proposal for those areas. The evaluation team, however, found that as compared to other proposals, RSEC did not have sufficient experienced personnel. Accordingly, RSEC was not included in the competitive range for an oral presentation.

RSEC argues that its proposal should not have been eliminated from the discussion process. RSEC complains that in several instances, the project teams proposed by

those firms which were included in the competitive range were led by individuals with less experience than the project manager proposed by RSEC. In addition, RSEC contends that STDA discriminated against small business. Although RSEC acknowledges that small business firms were ultimately selected for award in two of the four areas, RSEC argues that additional proposals from small business firms could have been considered. RSEC indicates that one of the evaluation criteria states that size and background would be considered and RSEC argues that the consideration of size demonstrates a bias against very small firms.

The evaluation of technical proposals and the resulting determination of whether an offeror should be considered further, i.e., whether an offeror is within the competitive range, are matters within the discretion of the contracting activity. Essex Electro Engineers, Inc.; ACL-Filco Corporation, B-211053.2, B-211053.3, Jan. 17, 1984, 84-1 C.P.D. ¶ 74. In reviewing an agency's technical evaluation, we will not evaluate the proposals de novo, but will only examine the evaluation to ensure that it had a reasonable basis. Coherent Laser Systems, Inc., B-204071, June 2, 1982, 82-1 C.P.D. ¶ 517. Additionally, we note that the complaining party has the burden of showing that the technical evaluation was not reasonable. Id.

Based on the record, we find that RSEC has not made such a showing here. The evaluation criteria in the RFP indicated that experience was the major factor for determining technical acceptability. This criterion included adequate firm size and background to accomplish the job, relevant experience in similar projects and management qualifications. The record shows that the evaluation committee carefully considered the resumes submitted with the proposals. STDA states that the entire staff proposed by RSEC consisted of only three individuals and only one of them had a clearly established background in rail transit work. STDA determined that RSEC did not offer the comprehensive experience that others offered and found, on a relative basis, that RSEC's proposal was not within the competitive range. Our decisions have approved this relative approach to determining the competitive range and, although the record evidences RSEC's disagreement concerning the relative merits of proposals, we cannot conclude that STDA's evaluation was unreasonable or otherwise improper. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299; Science Management Corporation, B-207670, Sept. 23, 1983, 83-2 C.P.D. ¶ 362.

With respect to RSEC's complaint that STDA discriminated against small business firms, we find that this allegation is not supported by the record. There is no evidence that STDA in any way restricted small business firms from competing or discriminated against their participation. Section 9 of attachment "O" to Office of Management and Budget (OMB) Circular A-102, concerning grant procurements, merely requires that affirmative steps be taken to assure that small and minority businesses are utilized whenever possible. See Hispano American Corporation, B-200268, Mar. 17, 1981, 81-1 C.P.D. ¶ 201. There is nothing in the record which indicates that STDA did not solicit and fairly consider small business firms and, in view of the fact that two of the four consulting contracts were awarded to small businesses, we find that STDA has fulfilled the obligation.

Concerning RSEC's allegation that the consideration of size as an evaluation factor was improper, we find this allegation untimely. This complaint involves an alleged solicitation deficiency which was apparent on the face of the solicitation and such a complaint must be filed before the time set for receipt of initial proposals, when corrective action is most practicable. Reliance Steel Products Company, B-206754, Jan. 24, 1983, 83-1 C.P.D. ¶ 77. Since RSEC's objection to the use of size as an evaluation criteria was not raised until after the closing date for receipt of proposals, it is untimely and will not be considered on the merits.

Finally, we note that in its protest, to UMTA, RSEC raised additional issues which UMTA declined to consider since they were not raised with STDA or filed with UMTA in a timely manner. We also will not consider these issues. In reviewing grant-related procurements, it is not our intention to interfere with the function and responsibilities of grantor agencies in administering grants. Since RSEC chose not to raise these issues in its complaint to the grantee under UMTA's protest procedures, we now decline to consider these issues as such action would tend to undermine the effectiveness of UMTA's grant administration function. Sanders Company Plumbing and Heating, B-196075, Feb. 6, 1980, 80-1 C.P.D. ¶ 99.

The complaint is dismissed in part and denied in part.

for *Milton J. Aroslan*
Comptroller General
of the United States